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District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
OCT 14 2010	
By _____	Clerk
_____	Deputy Clerk

Attorneys for the City of Pocatello

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

IDAHO GROUND WATER)	
APPROPRIATORS, INC.,)	
)	
Petitioners,)	Case No. CV-2010-382
)	
vs.)	(consolidated Gooding County
)	Cases CV-2010-382, CV-2010-383,
CITY OF POCATELLO,)	CV-2010-384, CV-2010-387,
)	CV-2010-388, and Twin Falls
Petitioner,)	County Case CV-2010-3403)
)	
vs.)	Fee Category: Exempt
)	
TWIN FALLS CANAL COMPANY, NORTH)	POCATELLO'S OBJECTION TO
SIDE CANAL COMPANY, A&B IRRIGATION)	AGENCY RECORD
DISTRICT, AMERICAN FALLS RESERVOIR)	
DISTRICT #2, BURLEY IRRIGATION)	
DISTRICT, MILNER IRRIGATION DISTRICT,)	
and MINIDOKA IRRIGATION DISTRICT,)	
)	
Petitioners,)	

vs.)
)
)
 GARY SPACKMAN, in his capacity as Interim)
 Director of the Idaho Department of Water Resources,)
 and THE IDAHO DEPARTMENT OF WATER)
 RESOURCES,)
)
 Respondents.)
)

IN THE MATTER OF DISTRIBUTION OF)
 WATER TO VARIOUS WATER RIGHTS)
 HELD BY OR FOR THE BENEFIT OF A&B)
 IRRIGATION DISTRICT, AMERICAN FALLS)
 RESERVOIR DISTRICT #2, BURLEY)
 IRRIGATION DISTRICT, MILNER IRRIGATION)
 DISTRICT, MINIDOKA IRRIGATION DISTRICT,)
 NORTH SIDE CANAL COMPANY AND TWIN)
 FALLS CANAL COMPANY)
)

COME NOW, CITY OF POCATELLO, through counsel, and respectfully objects, pursuant to rule 84(j) of the Idaho Rules of Civil Procedure and paragraph 8 of the Court's Procedural Order, to the agency record filed by the Idaho Department of Water Resources ("IDWR" or "Department") in this matter. This is a civil action pursuant to Idaho Code §§67-5270, 67-5279, and 42-1701A(4) seeking judicial review of the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Final Methodology Order") of the Director of the Idaho Department of Water Resources, *In the Matter of Distribution of Water To Various Water Rights Held by or for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company*, entered June 23, 2010.

The agency record filed by the Department is incomplete in that it does not include the entire record that the Agency reviewed in reaching its decision in the Methodology Order. Idaho Code § 67-5219 defines the content of the agency record under the Idaho Administrative Procedure Act. The record on appeal must consist of all relevant documents before the agency at the time of the decision, and not only those documents the agency relied upon in reaching its decision. *Wilderness Soc., Center For Native Ecosystems v. Wisely*, 524 F.Supp.2d 1285, 1295 (D. Colo. 2007). The agency record provided to the Court must contain the whole record:

“[t]he whole administrative record, however, is not necessarily those documents that the agency has compiled and submitted as ‘the’ administrative record. The ‘whole’ administrative record, therefore, consists of all documents and materials directly or indirectly considered by agency decision-makers and includes evidence contrary to the agency’s position.”

Thompson v. U.S. Dept. of Labor, 885 F.2d 551, 555 (9th Cir. 1989) (internal citations and quotations omitted, emphasis in original).

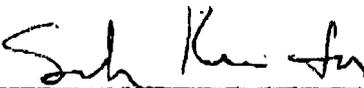
In this case, the entire record on appeal from Case No. CV-2008-551¹ (“SWC Delivery Call Record”) should be included, rather than the few documents from the SWC Delivery Call Record proposed to be included by the IDWR. In the remand that resulted in the Department’s issuance of the Final Methodology Order, the Department was required to issue a new injury methodology for administration of the SWC delivery call that was supported by the SWC Delivery Call Record, and this exact issue has been raised by Pocatello in its Notice of Appeal. Because the Department necessarily considered the SWC Delivery Call Record in its issuance of the Final Methodology Order, the Department’s failure to include the entire record from that matter is not in compliance with Idaho law.

¹ Gooding County, Case No. CV-2008-551, *In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Miller Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company*.

Pocatello respectfully requests that the entire SWC Delivery Call Record be included in the record of the captioned matter before the Court. The SWC Delivery Call Record has already been compiled by the Department, and the only additional documents that must be added are the pleadings filed with and orders issued by the district court in Case No. CV-2008-551.

Respectfully submitted, this 14th day of October, 2010.

CITY OF POCATELLO ATTORNEY'S OFFICE
Attorneys for the City of Pocatello

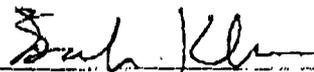
By 
A. Dean Tranmer

WHITE & JANKOWSKI, LLP
Attorneys for the City of Pocatello

By 
Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2010, I caused to be served a true and correct copy of the foregoing **Pocatello's Objection to Agency Record in Case No. CV-2010-382, Gooding County** upon the following by the method indicated:



Sarah Klahn, White & Jankowski, LLP

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Gary Spackman, Interim Director State of Idaho, Dept of Water Resources 322 E Front St PO Box 83720 Boise ID 83720-0098 Deborah.Gilbert@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail - Federal Express <input type="checkbox"/> Facsimile 208-287-6700, Phone 208-287-4942 <input checked="" type="checkbox"/> Email
C. Thomas Arkosch Capitol Law Group 301 Main St PO Box 32 Gooding ID 83330 tarkosch@capitolawgroup.net	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-934-8873 <input checked="" type="checkbox"/> Email
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<p>Garrick L. Baxter Chris M. Bromley Deputy Attorneys General - IDWR PO Box 83720 Boise ID 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-287-6700 <input checked="" type="checkbox"/> Email</p>
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<p>Dean Trautner City of Pocatello PO Box 4169 Pocatello ID 83201 dtrautner@pocatello.us</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-234-6297 <input checked="" type="checkbox"/> Email</p>